

STATE OF INDIANA)
) SS:
COUNTY OF PARKE)

IN THE PARKE CIRCUIT COURT

CAUSE NO. 61 CO1-0206-PL183

STATE OF INDIANA,)

Plaintiff,)

v.)

JACK OAKS d/b/a)
AMERICAN ASPHALT,)

Defendant.)

FILED

JUN 07 2002

Thickie J. White
CLERK PARKE CIRCUIT COURT

**COMPLAINT FOR INJUNCTION,
RESTITUTION, COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Roy P. Coffey, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code § 24-5-11-1 *et seq.*, for injunctive relief, consumer restitution, civil penalties, costs, and other relief.

PARTIES

1. The Plaintiff, State of Indiana is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code 24-5-11-14.

2. The Defendant, Jack Oaks, at all times relevant to this complaint was a resident of and conducted business in Parke County, with a principal place of business at Route 4, Box 145, Rockville, Indiana.

FACTS

3. On August 24, 1989, Defendant entered into an Assurance of Voluntary Compliance ("Assurance") with the Indiana Attorney General's Office, which Assurance was approved by the Marion Circuit Court on August 24, 1989. A true and correct copy of the Assurance is attached and incorporated by reference as Exhibit "A".

4. The terms of the Assurance requires the Defendant to comply with Indiana's Home Improvement Contracts Act, Ind. Code § 24-5-11-1 *et seq.*, when entering into home improvement contracts with Indiana consumers.

5. Since at least October 27, 2000, Jack Oaks engaged in home improvement work under the assumed business name of American Asphalt, with a principal place of business at Route 4, Box 145, Rockville, Indiana.

6. On October 27, 2000, Defendant entered into a contract with Leona Van Camp of Martinsville, Indiana, wherein Defendant agreed to pave Ms. Van Camp's private driveway for the price of four thousand five hundred dollars (\$4,500.00). A true and accurate copy of the contract is attached and incorporated by reference as Exhibit "B."

7. Jack Oaks represented to Van Camp that the asphalt drive would be paved to a thickness of four (4) inches.

8. The driveway was not paved to a thickness of four (4) inches.

9. Jack Oaks represented the driveway was warranted against defects for a period of one year.

10. Jack Oaks refused to provide warranty service and in fact no such warranty existed.

11. Defendant failed to include one or more of the requirements under Ind. Code §24-5-11-10(a)(1), *et seq.* in the home improvement contract entered into with Ms. Van Camp.

12. When Ms. Van Camp contacted Oaks with a request for warranty service to be provided, Oaks denied any such warranty existed.

13. On October 27, 2000, Defendant entered into a contract with James Whittaker of Martinsville, Indiana, wherein Defendant agreed to pave Mr. Whittaker's private driveway for the price of five thousand seven hundred dollars (\$5,700.00). A true and accurate copy of the contract is attached and incorporated by reference as Exhibit "C."

14. Jack Oaks represented the driveway was warranted against defects for a period of one year.

15. When Whittaker contacted Oaks with request for warranty service to be provided, Oaks denied any such warranty existed.

16. Defendant failed to include one or more of the requirements under Ind. Code §24-5-11-10(a)(1), *et seq.* in the home improvement contract entered into with Mr. Whittaker.

17. Jack Oaks was aware of the requirements listed under Ind. Code §24-5-11-10(a)(1), *et seq.* as a result of his execution of the prior AVC referred to in paragraph 3 above. Paragraphs 7, 8, and 9, of the AVC, stipulate the requirements of Ind. Code §24-5-11-10(a)(1) *et seq.* The AVC constitutes prima facie evidence of violations of Ind. Code §24-5-0.5-10.

COUNT I

VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT

18. The services described in paragraphs 6 and 13 are “home improvements” as defined by Ind. Code § 24-5-11-3.

19. The transactions referred to in paragraphs 6 and 13 above are “home improvement contract[s]” as defined by Ind. Code § 24-5-11-4.

20. Jack Oaks is a “supplier” as defined by Ind. Code § 24-5-11-6.

21. By failing to provide completed home improvement contracts containing the name and address of the home improvement supplier, and each of the telephone numbers and names of any agents to whom consumer problems and inquiries can be directed the home improvement contracts referred to in paragraphs 6 and 12 violated the Home Improvement Contracts Act, Ind. Code §24-5-11-10(a)(2).

22. By failing to provide completed home improvement contracts listing any time limitation on the consumers’ acceptances of the contract, the home improvement contracts referred to in paragraphs 6 and 13 violated the Home Improvement Contracts Act, Ind. Code §24-5-11-10(a)(3).

23. By failing to provide completed home improvement contracts containing reasonably detailed descriptions of the work to be performed under the contracts, or statements that specifications would be provided to consumers before commencing any work and that the contracts were subject to the consumers separate written and dated approval of the specifications, the home improvement contracts referred to in paragraphs 6 and 13 violated the Home Improvement Contracts Act, Ind. Code §24-5-11-10(a)(4) and Ind. Code §24-5-11-10(a)(5).

24. By failing to provide completed home improvement contracts containing the approximate starting and completion dates of the home improvements, the home improvement contracts referred to in paragraphs 6 and 13 violated the Home Improvement Contracts Act, Ind. Code §24-5-11-10(a)(6).

25. By failing to provide completed home improvement contracts containing statements of any contingencies that would materially change the approximate completion dates, the home improvement contracts referred to in paragraphs 6 and 13 violated the Home Improvement Contracts Act, Ind. Code §24-5-11-10(a)(7).

26. By failing to provide completed home improvement contracts containing signature lines for the home improvement supplier or the supplier's agent and for each consumer who is a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature, the home improvement contract referred to in paragraphs 6 and 13 violated the Home Improvement Contracts Act, Ind. Code §24-5-11-10(a)(9).

COUNT II

VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

27. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 26 above.

28. The transactions referred to in paragraph 6 and 13 are "consumer transactions" as defined by Ind. Code § 24-5-0.5-2(a)(1).

29. Defendant is a "supplier" as defined by Ind. Code §24-5-0.5-2(a)(3).

30. The violations of the Indiana Home Improvement Contracts Act, referred to in paragraphs 6 through 26 above, constitute deceptive acts in accordance with Ind. Code § 24-5-11-14.

31. Defendant's violations of the Assurance of Voluntary Compliance as set forth in paragraphs 21 through 26, above, are prima facie evidence of a deceptive act pursuant to Inc. Code §24-5-0.5-7(b).

32. By representing that Van Camp's driveway would of a particular standard grade or quality when Oaks knew or had reason to know it was not, as set forth in paragraphs 7 and 8 above, Defendant violated Ind. Code §24-5-0.5-3(a)(2).

33. By representing to Whittaker and Van Camp that the consumer transaction involved warranties, when Defendant knew the representation was false, as set forth in paragraphs 9 and 14 above, Defendant violated Ind. Code §24-5-0.5-3(a)(8).

COUNT III – KNOWING AND INTENTIONAL VIOLATIONS OF
THE DECEPTIVE CONSUMER SALES ACT

34. The Plaintiff realleges and incorporates by inference the allegations contained in paragraphs 1 through 33 above.

35. The misrepresentations and deceptive acts set forth in paragraphs 6 through 14 were committed by Defendant with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, enjoining the Defendant from the following:

a. in the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract that includes at a minimum the following:

- (1) The name of the consumer and the address of the residential property that is the subject of the home improvement;
- (2) The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- (3) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- (4) A reasonably detailed description of the proposed home improvements;
- (5) If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- (6) The approximate starting and completion date of the home improvements;
- (7) A statement of any contingencies that would materially change the approximate completion date;
- (8) The home improvement contract price; and
- (9) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement

contract with a legible printed or typed version of that person's name placed directly after or below the signature;

b. in the course of entering into home improvement transactions, failing to agree unequivocally by written signature to all of the terms of a home improvement contract before the consumer signs the home improvement contract and before the consumer can be required to make any down payment;

c. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against Defendant for the following relief:

a. consumer restitution pursuant to Ind. Code §24-5-0.5-4(c)(2), for the home improvement work in an amount to be determined at trial;

b. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

c. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for the Defendant's knowing violations of the Home Improvement Contracts Act and the Deceptive Consumer Sales Act, in the amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana;

d. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8 for the Defendant's intentional violations of the Home Improvement Contracts Act and the Deceptive Consumer Sales Act, in the amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana;

e. all other just and proper relief.

Respectfully submitted,

STEVE CARTER
Attorney General of Indiana
Atty. No. 4150-64

By:

Roy P. Coffey
Deputy Attorney General
Atty. No. 3930-29

Office of Attorney General
Indiana Government Center South
402 W. Washington, 5th Floor
Indianapolis, IN 46204
Telephone: (317) 233-3300

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STATE OF INDIANA
COUNTY OF MARION

SS:

IN THE MARION CIRCUIT COURT
CAUSE NO. 89 AVC 023

IN RE: Jack Oaks
individually and d/b/a
Jack's Asphalt Paving,
Respondent.

FILED

CC AUG 24 1989

Fane I. Mowen

ASSURANCE OF VOLUNTARY COMPLIANCE

The State of Indiana, by Linley E. Pearson, Attorney General of Indiana and Marguerite M. Sweeney, Deputy Attorney General, and the Respondent, Jack Oaks, and pursuant to IC 24-5-0.5-7(a) hereby enter into an Assurance of Voluntary Compliance ("Assurance").

It is acknowledged that violations of this Assurance constitute prima facie evidence of violations of IC 24-5-0.5-10. This Assurance is entered into without any adjudication of any issue of fact or law and by the consent of the parties.

It is agreed that:

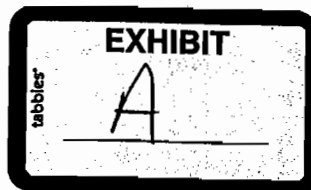
1. Respondent, Jack's Oaks, is an individual with a mailing address of Rt 4 Box 146, Rockville, Indiana. This address is also his principal place of business.

2. Respondent acknowledges and admits his responsibility and liability for acts, practices, and methods employed by his employees, agents, and representatives in all aspects, whether expressed or implied, of the promotion and advertisement of the Respondent's business activity.

3. Respondent acknowledges the jurisdiction of the Consumer Protection Division of the Office of the Attorney General to investigate matters hereinafter described, pursuant to the authority of IC 4-6-9-4.

4. Respondent acknowledges that, pursuant to IC 24-5-0.5-3, it is a deceptive act and a violation of Indiana law for any individual in this State to represent, orally or in writing:

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a. That the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have.

b. That the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not.

c. That the subject of a consumer transaction is new or unused, if it is not and if the supplier knows or should reasonably know that it is not.

d. That replacement or repair constituting the subject of a consumer transaction is needed, if it is not and if the supplier knows or should reasonably know that it is not.

e. That a specific price advantage exists as to the subject of a consumer transaction, if it does not and if the supplier knows or should reasonably know that it does not.

f. That the supplier has a sponsorship, approval, or affiliation in the consumer transaction he does not have, and which supplier knows or should reasonably know that he does not have.

g. That the consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the supplier knows or should reasonably know that the representation is false.

h. That the supplier is able to deliver or complete the subject of the consumer transaction within a stated period of time, when the supplier knows or should reasonably know he could not. If no time period has been stated by the supplier, there is a presumption that the supplier has represented that he will deliver or complete the subject of the consumer transaction within a reasonable time, according to the course of dealing or the usage of the trade.

5. Respondent acknowledges that pursuant to IC

24-5-0.5-10, a supplier commits a deceptive act if the supplier:

a. Solicits to engage in a consumer transaction without a permit or other license required by law;

b. Solicits to engage in a consumer transaction if a permit or other license is required by law to engage in the consumer transaction and the supplier is not

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qualified to obtain the required permit or other license or does not intend to obtain the permit or other license; or

c. Engages in a consumer transaction without a permit or other license required by law.

6. Respondent agrees to refrain from committing Deceptive Acts as defined by IC 24-5-0.5-3 and -10.

7. Respondent acknowledges that pursuant to IC 24-5-11-14 a supplier commits a deceptive act if the supplier, in the solicitation and furnishing of the products and services, either directly or indirectly through their employees, agents or other representatives, provide to consumers contracts which do not contain one or more of the following provisions required by IC 24-5-11-10(a):

a. The supplier's name and address and each of the telephone numbers and names of any agent to whom consumer problems and inquiries could be directed;

b. A reasonably detailed description of the proposed home improvements, including the specifications as defined by IC 24-5-11-8, and a statement that the specifications would be provided to the consumer before the supplier commences any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;

c. The approximate starting and completion dates of the home improvements;

d. Signature lines for the supplier or his agent and for each consumer who was to be a party to the home improvement contract with a legible printed or a typed version of that person's name placed directly after or below the signature;

e. A statement of the contingencies that would materially change the approximate completion date.

8. Respondent agrees to refrain from providing to consumers home improvement contracts which are not in compliance with IC 24-5-11-10(a).

9. Respondent acknowledges that pursuant to IC 24-5-10-18 a supplier commits a deceptive act if the supplier engages in a home consumer transaction and fails to follow the notice requirements established by IC 24-5-10-9, which reads as follows:



a. The supplier in a home consumer transaction shall deliver to the consumer two (2) copies of a written notice of the consumer's right to cancel the transaction.

b. The notice shall be on a separate document in at least ten (10) point boldface type and contain the following information:

- (1) The address to which the consumer's notice of cancellation may be delivered or sent.
- (2) A statement that the transaction may be cancelled before midnight of the third business day after the consumer and the supplier finally agree to the transaction.
- (3) A statement of the explanation of the steps the consumer must take to cancel the transaction.
- (4) A statement of the steps the consumer and supplier must take after cancellation of the transaction.
- (5) The date by which the consumer must exercise the right to cancel the transaction.

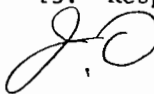
10. Respondent agrees to refrain from providing to consumers home improvement contracts which are not in compliance with IC 24-5-11-10(a).

11. Respondent agrees to settle complaints which have been filed against the Respondent with the Office of Attorney General. Specifically, the Respondent agrees to:

N/A

12. Respondent agrees to reimburse the Consumer Protection Division of the Office of the Attorney General for their reasonable costs of investigating this matter in the amount of two hundred + 00/100 (\$200.00), payable to the State of Indiana upon execution of this Assurance and the return thereof to this office.

13. Respondent agrees that the execution of this



Assurance does not constitute a waiver of any private cause of action which any individual consumer could assert against the Respondent in a court of competent jurisdiction.

14. Respondent agrees to fully cooperate with the Office of the Attorney General in the resolution of any future complaints received by the Consumer Protection Division.

15. Respondent agrees and consents that neither the Respondent nor his employees, agents, or representatives will make any representations whatsoever which would lead a reasonable person to believe that the Indiana Attorney General or any member of his staff is of the opinion that the activities and operations of the Respondent are in accordance with the laws and rules of this State or that said officials approve or endorse such activities and operations.

16. This Assurance of Voluntary Compliance is to be approved by the Marion Circuit Court and filed with the Clerk of Circuit Court of Marion County as required by IC 24-5-0.5-7. Filing is to be performed by the Office of the Attorney General.

IN WITNESS THEREOF, Jack Oaks has signed this in his individual capacity and on behalf of all other partners, employees, agents, representatives, successors, and assigns, and agrees to the faithful performance of this Assurance of Voluntary Compliance, and Marguerite M. Sweeney, Deputy Attorney General, has signed this document on behalf of the State of Indiana.

STATE OF INDIANA

RESPONDENT

LINLEY E. PEARSON
Attorney General of Indiana

By:

Marguerite M. Sweeney
Marguerite M. Sweeney
Deputy Attorney General

Jack Oaks
Jack Oaks

APPROVED this ____ day of AUG 21 1989 1989.

John M. Ryan
Judge, Marion Circuit Court

Office of Attorney General
219 State House
Indianapolis, Indiana 46204
Telephone: (317) 232-0169
CCH/dmf:2742q

AMERICAN ASPHALT
by JACK OAKS
765-569-1829
PROPOSAL AND CONTRACT



TO Leona Van Camp DATE 10-27 192000

ADDRESS [REDACTED]

The undersigned proposes to furnish all materials and perform all labor necessary to complete the following:

	DESCRIPTION
PRIVATE DRIVE	<u>flat price of 4500</u>
CITY STREETS	
PARKING LOT	<u>paid in full 1 yr</u>
ASPHALT & GRAVEL	<u>by check</u>
HOT MIX ASPHALT	
SEAL COAT	<u>JACK OAKS</u>

All of the above work to be completed in a workmanlike manner according to the standard practices for the sum of fourty five hundred Dollars (\$ 4500)
Payment due in full when completed.

Make all checks
payable to
JACK OAKS

Any alteration or deviation from the above specifications involving extra costs of material or labor will only be executed upon written orders for same and will become an extra charge over the sum mentioned in this contract. All agreements must be made in writing.

Respectfully submitted,

Firm American Asphalt

By [Signature]

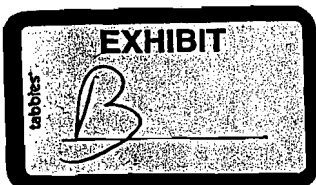
ACCEPTANCE

You are hereby authorized to furnish all materials and labor required to complete the work mentioned in the above proposal, for which _____ agree to pay the amount stated in said proposal and according to the terms thereof.

ACCEPTED

[Signature]
Leona Van Camp

Date _____, 19 _____





AMERICAN ASPHALT
by JACK OAKS
765-569-1829
PROPOSAL AND CONTRACT



TO James Whittaker DATE 10-27-2000
ADDRESS [REDACTED]

The undersigned proposes to furnish all materials and perform labor necessary to complete the following:

	DESCRIPTION
PRIVATE DRIVE	<u>flat piece of 5,200</u>
CITY STREETS	
PARKING LOT	<u>all work is guaranteed</u>
ASPHALT & GRAVEL	<u>12 years</u>
HOT MIX ASPHALT	<u>pay is full</u>
SEAL COAT	

All of the above work to be completed in a workmanlike manner according to the standard practices for the sum of fifty thousand dollars (\$5,200)

Payment due in full when completed.

Make all checks
payable to
JACK OAKS

Any alteration or deviation from the above specifications involving extra costs of material or labor will only be executed upon written orders for same and will become an extra charge over the sum mentioned in this contract. All agreements must be made in writing.

Respectfully submitted,

Firm

By

ACCEPTANCE

You are hereby authorized to furnish all materials and labor required to complete the work mentioned in the above proposal, for which _____ agree to pay the amount stated in said proposal and according to the terms thereof.

ACCEPTED

Date

27 Oct

19

2001

James Whittaker

EXHIBIT

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